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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/054,827

01/23/2002

Philipp Ritter

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26294

7590

04/20/2006

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EXAMINER

SINGH, ARTI R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/054,827

Applicant(s)

RITTER, PHILIPP

Examiner

Ms. Arti Singh

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01/19/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-9, 11, 12, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-9, 11, 12, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment/Arguments*

1. The Examiner has carefully considered Applicant's remarks and amendments dated 01/19/06. Applicant's amendments to the claims have been entered. Pending claims at this time in the prosecution are 3-9, 11, 12, 19 and 20. Applicant's arguments filed 01/16/06 have been fully considered but they are not persuasive. All previously made rejections are maintained.
2. Applicant's traversal is that the silica particles are manually/mechanically incorporated into the openings of the fabric and that the cited prior art does not teach the same. It is the position of the Examiner that Applicant is mechanically (not manually) applying the particles by means of a coating process. This is also the same way that the cited art teaches applies any of their coating layers. Applicant further states that the coating that prior art teaches is then cured and therefore forms a cured layer, which is not the same as that of Applicant. Applicant also cures (drying step) prior to applying the additional silicone coating. Curing is defined by Webster's dictionary as "to prepare or alter by chemical or physical process, and thus the drying step that Applicant needs would be considered a curing process. The Examiner would also like to bring to attention that Applicant is claiming a final end product and in the final product a skilled artisan would not be able to tell the difference of how and when the plural coating layers were applied. Applicant has no working examples that show any evidence to the contrary and that their method of making their composite is any different in the final product. If this is the case, it is suggested that Applicant show what these unexpected results are in a Declaration format. Additionally, it should be noted that Applicant is arguing method limitations in an article claim, and combination of the cited prior art in the previous office action is identical to or only slightly different than the that claimed

Art Unit: 1771

by Applicant. Both have the same fabric, made from the same type of fibers and are coated with the same types of coating to make the same final product- an airbag. Even though the presence of process limitations in the claims may be so, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The cited prior art strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with that of the cited art.

With regard to the remarks made on pages 9-10 in reference to the '724 patent, Applicant is directed to columns 5-7 where the layers (optionally) do not require polyurethane, and thus the remarks on pages 9-10 are inaccurate.

With regard to the confusion made over the limitation of at least 5% static friction, it is the position of the Examiner, and as was explained in the interview, that is the position of the Examiner (Official Notice if you will) that a fabric with no coating and a fabric with a minimal amount of coating (5%) will automatically have a difference in tear propagation and thus would have a difference in static friction. Thus a person having ordinary skill in the art at the time the invention was made would have found it obvious to alter or in this case even apply a minimal amount of coating which in turn would create a static friction of at

Art Unit: 1771

least 5%, just by its presence alone. One would have been motivated to do this since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 3-9, 11, 12 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6458724 issued to Veiga et al. further in view of USPN 6140414 issued to Ohsawa et al. as set forth in the office action dated 07/14/05.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-F 9-5:30pm.

Art Unit: 1771

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ms. Arti Singh  
Primary Examiner  
Art Unit 1771

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